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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY JOE NEGRON, JR., Defendant and Appellant.	H034312 (Monterey County Super. Ct. No. SS081607)

I. STATEMENT OF THE CASE

Defendant Anthony Joe Negron, Jr. appeals from a judgment entered after he pleaded guilty to carrying a dirk or dagger and unlawful participation in a criminal street gang. (Pen. Code, §§ 12020, subd. (a)(4), 186.22, subd. (a), § 1538.5, subd. (m)[1]; Cal. Rules of Court, rule 8.204(a)(2)(B).) On appeal, he claims the court erred in denying his motion to suppress. He also challenges the constitutionality of three probation conditions prohibiting him from being present in gang areas and wearing or possessing gang items and restricting his access to courthouses and court proceedings.

We modify the judgment to change the probation conditions concerning being present in gang areas and at court proceedings and affirm the judgment as modified.

[1] All further unspecified statutory references are to the Penal Code.

II. FACTS[2]

On May 26, 2008, police officers saw defendant in his front yard and stopped to talk to him. He consented to be searched, and police found a weapon in his pocket. It was an eight-inch, sharpened metal rod in a wooden handle. He said he carried it for protection because he had recently been assaulted by a group of people near his house. Defendant said he had been associated with a Norteño street gang for the last four years.

III. DENIAL OF MOTION TO SUPPRESS

A. *Evidence and Ruling*[3]

Around 7:30 p.m. on May 26, 2008, uniformed Salinas Police Officers Michel Cupak and Ken Schwener were driving patrol in an unmarked car on Pajaro Street when they saw defendant standing in the front yard of his house on the other side of the street. He was dressed almost entirely in red, which the officers considered highly unusual, if not provocative, because the color red is associated with Norteño gangs and because "Norteños and Sureños both know if you're wearing that many colors, that [the police] will contact them." The officers pulled over to the curb in front of the house, parked in the wrong direction about 10 feet from defendant, and got out. Officer Schwener approached defendant, who was standing just inside the fenced-in yard at the entrance to a gate, smoking a cigarette and holding a cell phone. Officer Cupak remained a few feet behind Officer Schwener. Neither had their guns drawn or their hands on them.

From outside the fence, Officer Schwener asked defendant if they could speak. Defendant said yes. Because he had one hand in his pocket, Officer Schwener asked if he could search him for weapons. Defendant agreed, and as he was turning around to

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[2] Our factual summary is based on the probation report.

[3] Defendant moved to suppress the evidence at the preliminary hearing and renewed his motion later at a motion under Penal Code section 995. Both motions were based on evidence adduced at the preliminary hearing.

facilitate the search, he admitted that he had something in his pocket. Officer Schwener reached in and found an ice-pick type weapon. Defendant was then arrested.

Officer Cupak testified that he saw defendant's cell phone after his arrest. Either defendant was holding it or it, was sitting on a pillar. He thought Officer Schwener had asked him to put the phone down. However, he was not sure when Officer Schwener might have done so.

The court found that the initial encounter between the officers and defendant was consensual and not a detention and thereafter defendant voluntarily consented to be searched. Thus, seizure of the weapon and defendant's arrest were reasonable under the Fourth Amendment. Accordingly the court denied defendant's motion to suppress.[4]

B. *Standard of Review*

In ruling on a motion to suppress, the trial court is vested with the power to judge the credibility of witnesses, resolve conflicts in the testimony, weigh the evidence, and draw factual inferences. (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) Accordingly, we review the evidence in the light most favorable to the trial court's ruling, accepting its determinations of credibility and its express and implied findings of fact if supported by substantial evidence. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) The trial court also selects the applicable rule of law and applies it to the facts to determine the legality of police conduct, and both of these determinations are subject to our independent review. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140; *People v. Alvarez* (1996) 14 Cal.4th 155, 182; *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Defendant contends that his initial encounter with police was a detention and not a consensual encounter; and because the officers had no reason to suspect any criminal activity, the detention and subsequent arrest were unreasonable and violated his Fourth Amendment rights.

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[4] The court denied defendant's initial and renewed motions on the same grounds.

C. *Applicable Principles*

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations.] Our present inquiry concerns the distinction between consensual encounters and detentions. Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.] [¶] The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. *Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur.* [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant

in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821, italics added.)

D. *Discussion*

According to defendant, where, as here, a police car drives over to the wrong side of the street and parks directly in front of someone; two armed officers get out and walk up to that person; and one of the officers said to put down his or her cell phone, a reasonable person would not feel free to disobey or walk away.

Defendant's rendition of the circumstances is both selective and erroneous. Viewed in the light most favorable to the ruling below, the evidence before the court establishes that defendant was standing in his yard behind a fence. The officers parked their unmarked car 10 feet away from him. Neither their siren nor lights were activated. They got out, but did not draw their weapons or have their hands on them. Officer Schwener approached defendant but did not enter the yard and stayed outside the fence. Officer Cupak stayed farther behind. Officer Schwener asked if he could talk to defendant. Defendant agreed. There is no evidence that Officer Schweners shouted his request in a directive manner or that his tone or attitude was otherwise intimidating or menacing.

Under the circumstances, we do not find that the officers asserted their authority in a way that would cause a reasonable person under the circumstances to feel that his or her liberty was being restrained and that he or she was not free to decline Officer Schwener's request to talk and end the incipient encounter.

Contrary to defendant's version of events, the record does not establish, and the trial court did not implicitly find, that Officer Schwener immediately directed defendant to put down his cell phone. The record is not clear whether defendant was talking when the officers arrived; nor is it clear whether or when Officer Schwener might have asked defendant to put down the phone because Officer Cupak who testified below did not see the phone until after defendant was arrested. What Officer Cupak did say was that his

partner first asked defendant if they could talk; and because defendant had a hand in his pocket at that time, Officer Schwener asked if he could search him for weapons. Defendant agreed. Under the circumstances, the record supports an inference that defendant had his hand in his pocket holding a phone when Officer Schwener asked if he could search him; and when defendant took his hand out, the officer asked him to put it down.

It is settled that mere police questioning does not amount to an involuntary detention. (*United States v. Drayton* (2002) 536 U.S. 194, 200-201.) "Where a consensual encounter has been found, police may inquire into the contents of pockets [citation]; ask for identification [citation]; or request the citizen to submit to a search [citation]. It is not the nature of the question or request made by the authorities, but rather the manner or mode in which it is put to the citizen that guides us in deciding whether compliance was voluntary or not." (*People v. Franklin* (1987) 192 Cal.App.3d 935, 941.)

Defendant's reliance on *People v. Garry* (2007) 156 Cal.App.4th 1100 and *People v. McKelvy* (1972) 23 Cal.App.3d 1027 is misplaced.

In *People v. Garry, supra,* 156 Cal.App.4th 1100, an officer watched the defendant standing next to a car for a few minutes just sometime before midnight. The officer focused his spotlight on the defendant, got out of his patrol car, essentially ran over to the defendant, and began asking pointed questions about whether the defendant was on probation or parole. The court found the officer's actions constituted a show of authority sufficiently intimidating that a reasonable person would not have felt at liberty to resist. (*Id*. at pp. 1111-1112.) Here, the officers did not shine a spotlight on defendant; they did not race toward him; and they did not immediately ask him pointed questions about his parole or probationary status. Rather, the evidence here shows a far less urgent encounter that was more casual and relaxed. Thus, *Garry* does not suggest to us that the encounter here was a detention and not a consensual encounter.

People v. McKelvy, supra, 23 Cal.App.3d 1027 is even more distinguishable. There, police bathed the defendant with a spotlight. One officer approached him armed with a shotgun. Three other armed officers took positions around the officer and defendant. And the officer then demanded to know where the defendant was going. (*Id.* at p. 1032.) The encounter here involved no such show of force and intimidation.[5]

In short, defendant fails to convince us that, as a matter of law, his contact with the officers was an unlawful detention. Accordingly, we do not find that the court erred in denying his motion to suppress.

IV. PROBATION CONDITIONS

Defendant contends that the gang-related probation conditions prohibiting him from wearing or possessing gang paraphernalia and from being in gang areas and restricting his access to courthouses and court proceedings are vague and/or overbroad, and the last one also violates his First Amendment rights.

A. *Applicable Principles*

Under section 1203.1, a court granting probation may impose "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer . . . ." (§ 1203.1, subd. (j).) "The primary goal of probation is to ensure '[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.' [Citation.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*).) "In granting probation, courts have broad discretion to impose

[5] Defendant cites other cases that would be relevant if the record supported his factual assertion that the first thing Officer Schwener did was tell defendant to put down his cell phone. As noted, however, the record does not establish that before asking if they could talk, Officer Schwener, in essence, ordered him to do something.

conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citations.]" (*Id.* at pp. 1120-1121.)

"The trial court's discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute." (*Carbajal, supra,* 10 Cal.4th at p. 1121.) Accordingly, our Supreme Court has "interpreted Penal Code section 1203.1 to require that probation conditions which regulate conduct 'not itself criminal' be 'reasonably related to the crime of which the defendant was convicted or to future criminality.' [Citation.]" (*Ibid.*)

"Generally, '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.]' [Citation.]" (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) Consequently, "even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long [as] the condition is reasonably related to preventing future criminality. [Citation.]" (*Id.* at p. 380.)

"As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ' " 'exceeds the bounds of reason, all of the circumstances being considered.' " [Citations.]' [Citation.]" (*Carbajal, supra,* 10 Cal.4th at p. 1121.) "We review conditions of probation for abuse of discretion. [Citations.]" (*Olguin, supra,* 45 Cal.4th at p. 379.)

Concerning conditions that implicate constitutional rights, we note that "probation is a privilege and not a right, and . . . adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights—as, for example, when they agree to warrantless search conditions. [Citations.]" (*Olguin, supra,* 45 Cal.4th at p. 384.) Nevertheless, our Supreme Court has recognized that "[a] probation condition that imposes limitations on a person's constitutional rights must closely tailor those

limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*).)

In addition, "[a] probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness. [Citation.]" (*Sheena K., supra,* 40 Cal.4th at p. 890.) Thus, a probation condition forbidding a minor from associating with " 'anyone disapproved of by probation' " was unconstitutionally vague where the probation condition did not inform the minor "in advance with whom she might not associate" but it could be rendered constitutional by modifying the condition "to impose an explicit knowledge requirement . . . ." (*Id.* at pp. 889, 891-892.)

The "underlying concern" of the void for vagueness doctrine "is the core due process requirement of adequate *notice*" (*People v. ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115) or "fair warning." (*Sheena K., supra,* 40 Cal.4th at p. 890.) "The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation] protections that are 'embodied in the due process clauses of the federal and California Constitutions. (U.S. Const., Amends. V, XIV; Cal. Const., art. I, § 7.)' [Citation.]" (*Sheena K., supra,* 40 Cal.4th at p. 890.)

B. *Forfeiture*

The Attorney General claims that defendant forfeited his claims as to the gang areas and gang paraphernalia by failing to object.

Generally, a defendant forfeits any claim that a probation condition is unreasonable if he fails to timely raise an objection in the trial court. (*People v. Welch* (1993) 5 Cal.4th 228, 234-237.) However, the forfeiture rule does not apply to claims that a probation condition is facially vague and overbroad, where the condition may be corrected on appeal without reference to the particular sentencing record developed in the

trial court and without remanding to the trial court for further findings. (*Sheena K., supra,* 40 Cal.4th at pp. 885-889.) Other constitutional challenges cannot be raised on appeal in the absence of objection in the trial court. (*Id.* at p. 889.) Accordingly, we do not find that defendant forfeited his claims on appeal.

C. *Gang Paraphernalia*

The court ordered that defendant "not to possess, wear, use, or display any item you know, suspect, or have been told by the probation officer to be associated with membership or affiliation in a gang, including, but not limited to, any insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing, hand sign, or paraphernalia, to include the color red."

Defendant concedes that the evidence of his membership in a Norteño street gang supports imposition of such a condition prohibiting him from possessing, displaying, or using items that were the color red because red is associated with Norteño gangs. However, he claims the condition is unconstitutionally overbroad because it is not limited to that color. We disagree.

Defendant admitted involvement with gang culture for four years. In our view, the condition is closely tailored to the purposes of rehabilitation and reformation because those purposes are reasonably advanced by prohibiting defendant from displaying, et cetrea items he knows or has been told are associated with *any* gang. (See *People v. Lopez* (1998) 66 Cal.App.4th 615, 625-626.) Although the condition may be primarily focused on terminating defendant's association with fellow Norteño gang members, it is also important to his reformation and rehabilitation that he avoid associations with any gang that might lead to future criminal conduct. If defendant were to switch gangs or try to provoke a rival gang by wearing or displaying an item associated with a non-Norteño gang, he might be challenged by a member of a rival gang and thereby be led into precisely the type of inter-gang violence that the condition is intended to help him avoid. Accordingly, we hold that the condition need not be modified and limited to items that

are colored red or that are associated with Norteño gangs. (*People v. Leon* (2010) 181 Cal.App.4th 943 [general condition need not be modified and limited to items associated with the defendant's particular gang].)

D. *Gang Areas*

The court ordered that defendant "not be *present* in any area you know, suspect, or are told by the probation officer to be a gang-gathering area." (Italics added.)

Defendant claims that the condition is vague because it does not provide fair notice of what it means to be " 'present' " in an area. He also claims the condition is overbroad because "it potentially prevents [him] from being present in broad areas of a city."

In support of these claims, defendant cites this court's opinion in *In re H.C.* (2009) 175 Cal.App.4th 1067 (*H.C.*).

In *H. C., supra,* 175 Cal.App.4th 1067, we discussed the propriety of a condition that the probationer " 'not *frequent* any areas of gang related activity and not participate in any gang activity.' " (*Id*. at p. 1072, italics added.) We found the word " 'frequent' " to be "obscure" and the phrase " 'areas of gang-related activity' " to be overbroad in that it "might be, in some instances, an entire district or town." (*Ibid*.) We gleaned that the point of the probation condition was to prohibit the minor from visiting areas known to him to be a place of gang-related activity. Although we considered it "preferable" for such a condition "to name the actual geographic area that would be prohibited to the minor and then to except from that certain kinds of travel, that is, to school or to work," we concluded that "[a]t the very least the condition . . . should be revised to say that the minor not visit any area known to him to be a place of gang-related activity." (*Ibid*.)

Although we do not find the word "present" to be vague or obscure, we nevertheless find the condition to be constitutionally problematic. Applied literally, the prohibition against being "present" in gang areas would render him subject to arrest for a probation violation for merely passing through gang-gathering areas while traveling by

bus or in a friend's car on his way to school, work, home, or the court. Such an application, however, implicates defendant's constitutional right to travel[6] and is not narrowly tailored to prevent defendant's involvement in gang-related activity and achieve the rehabilitative and reformative purposes of probation. (See *In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373, [observing that a restriction on travel to gang territory might be proper for a minor living outside the gang's territory but overbroad for a minor who lives, works, or attends school within that area]; *In re White, supra,* 97 Cal.App.3d 141, 149-151 [probation condition forbidding travel within designated areas having significant prostitution activities violated the defendant's constitutional right to travel].) Accordingly, we shall modify the condition to prohibit defendant from *visiting or*

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[6] Although "[t]he word 'travel' is not found in the text of the [federal] Constitution," "the 'constitutional right to travel from one State to another' is firmly embedded in [the United States Supreme Court] jurisprudence. [Citation.]" (*Saenz v. Roe* (1999) 526 U.S. 489, 498.) "The right to travel has been described as a privilege of national citizenship, and as an aspect of liberty that is protected by the Due Process Clauses of the Fifth and Fourteenth Amendments." (*Jones v. Helms* (1981) 452 U.S. 412, 418-419, fns. omitted; see *Attorney General of New York v. Soto-Lopez* (1986) 476 U.S. 898, 902 (plur. opn. of Brennan, J.) ["textual source of the constitutional right to travel, or, more precisely, the right of free interstate migration" "has been variously assigned to the Privileges and Immunities Clause of Art. IV," "to the Commerce Clause," "to the Privileges and Immunities Clause of the Fourteenth Amendment," and "has also been inferred from the federal structure of government adopted by our Constitution"].) "The 'right to travel' discussed in [the United States Supreme Court] cases embraces at least three different components. It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." (*Saenz v. Roe, supra*, 526 U.S. at p. 500.) In addition, "[t]he right of intrastate travel has been recognized as a basic human right protected by article I, sections 7 and 24 of the California Constitution. [Citation.]" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1100; see *In re White* (1979) 97 Cal.App.3d 141, 148 ["the right to intrastate travel (which includes intramunicipal travel) is a basic human right protected by the United States and California Constitutions as a whole"].)

remaining in any area he knows, suspects, or is told by his probation officer to be a gang-gathering area.[7]

E. *Court Proceedings or Courthouses*

The court ordered that defendant "not be present at any court proceeding or at any courthouse unless you're scheduled for a court hearing or have the express permission of the probation officer."

Defendant claims the condition is "an overbroad restriction of [his] First Amendment guarantee of access to court proceedings. [Citation.] Alternatively, the condition should be limited to visiting any court proceeding where he knows any gang member is present unless he is scheduled for a court hearing or has express permission from his probation officer." The Attorney General agrees that the condition is overbroad.

In general, a ban on being present at any court proceeding unless a party may impinge upon a host of constitutional rights. "[T]he right [of the general public] to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.' [Citation.]" (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 580, fn. omitted (plur. opn. of Burger, J.).) "[I]n general, the First Amendment right of access applies to civil proceedings as well as to criminal proceedings." (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1209.)

In addition, "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. We have expressly identified this 'right to remove from one place to another according to inclination' as 'an attribute of personal liberty' protected by the Constitution. [Citations.] Indeed, it is apparent that an individual's decision to remain in a public place of his choice is as much

[7] Defendant concedes that such a modification would render the condition proper.

a part of his liberty as the freedom of movement inside frontiers that is 'a part of our heritage' [citation], or the right to move 'to whatsoever place one's own inclination may direct' identified in Blackstone's Commentaries. [Citations]" (*City of Chicago v. Morales* (1999) 527 U.S. 41, 53-54, fns. omitted.)

Although there is an exception for court proceedings in which defendant is scheduled for a hearing, the probation condition still has a broad sweep. There can be a variety of legitimate reasons for being at a court proceeding other than to intimidate or threaten a witness or give support or encouragement to another gang member.

Moreover, the condition is not saved by the possibility of obtaining the probation officer's permission because a probation condition, which in effect assigns unfettered discretion to a probation officer to determine its scope, risks being unconstitutionally overbroad.

In *People v. O'Neil* (2008)165 Cal.App.4th 1351, the appellate court struck down a condition that forbade the defendant from associating with all persons designated by his probation officer because the condition was "overbroad and permit[ted] an unconstitutional infringement on defendant's right of association." (*Id*. at pp. 1354, 1358.) The court acknowledged that a trial court "may leave to the discretion of the probation officer the specification of the many details that invariably are necessary to implement the terms of probation" but a probation condition could not be "entirely open-ended" because the trial court was responsible for determining "the nature of the prohibition placed on a defendant as a condition of probation, and the class of people with whom the defendant is directed to have no association." (*Id*. at pp. 1358-1359.) The appellate court reasoned: "Although probation officers may be given 'wide discretion to enforce court-ordered conditions' [citation], they may not create conditions not expressly authorized by the court [citation]." (*Id*. at p. 1358.) In *O'Neil*, the lower court authorized the probation officer to designate those with whom defendant could not associate; it did not in any way define the class of persons who could be so designated. (*Id*. at p. 1354.)

The appellate court observed that while the lower "court may well have anticipated that the probation officer would specify individuals known to be using or dealing in illicit drugs . . . [citation] 'this factor should not be left to implication.' [Citations.]" (*Id*. at p. 1358.) The appellate court concluded that the condition was impermissibly overbroad since it "contain[ed] no such standard by which the probation department is to be guided." (*Id* . at p. 1359.)

The condition here suffers from a similar defect. While the trial court might expect the probation officer to routinely grant permission to appellant to be present at a court proceeding unless appellant appeared to have an unlawful purpose, a gang-related purpose, or some other purpose related to future criminality, the probation condition does not provide this standard for granting or withholding approval. Neither does the condition require appellant to merely notify his probation officer of any court attendance in instances where appellant is not a party or scheduled for a hearing, which would facilitate effective supervision. (Cf. *Olguin, supra*, 45 Cal.4th at pp. 378, 383, 385 [up-holding probation condition requiring the defendant to notify probation officer of any pets present at his residence and emphasizing that condition did not require defendant to obtain permission from his probation officer in order to obtain or keep any pet].) If the judicial concern is intimidation of witnesses or jurors by gangs and support of other gang members during court proceedings, the probation condition can be more narrowly written to address those specific problems, which would closely tailor the condition to its intended purpose and render it constitutional.

Accordingly, we shall modify the condition to prohibit defendant from being present at any court proceeding or courthouse if he knows or suspects that a member of a criminal street gang is present or if the proceeding concerns a member of a criminal street gang, unless he is scheduled for a court hearing or has the express permission of his probation officer.

V. DISPOSITION

We modify the probation conditions concerning being present in gang areas and limiting access to court proceedings to read as follows:

You shall not visit or remain in any area known, suspect, or are told by the probation officer to be a gang-gathering area.

You shall not be present at any court proceeding or courthouse if you know or suspect that a member of a criminal street gang is present or if the proceeding concerns a member of a criminal street gang, unless you are a scheduled for a court hearing or have the express permission of your probation officer.

As modified, the judgment is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.